

COMMISSION ON HUMAN RIGHTS

SECOND SESSION

SUMMARY RECORD OF FORTY-FIRST MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 16 December 1947, at 3 p.m.

Present :

Chairman : Mrs. Franklin D. Roosevelt (United States
of America)

Rapporteur : Dr. C. Malik (Lebanon)

Members : Colonel W.R. Hodgson (Australia)
Professor F. Dehousse (Belgium)
Mr. A.S. Stepanenko (Byelorussian S.S.R.)
Dr. C.H. Wu (China)
Mr. O. Loutfi (Egypt)
Professor R. Cassin (France)
Mrs. Hansa Mehta (India)
Mr. A.G. Pourevaly (Iran)
Mr. M. Amado (Panama)
General C.P. Romulo (Philippine Republic)
Mr. M. Klekovkin (Ukrainian S.S.R.)
Mr. A.E. Bogomolov (U.S.S.R.)
Lord Dukeston (United Kingdom)
Mr. A.C. Victorica (Uruguay)
Dr. V. Ribnikar (Yugoslavia)

Representative of
the Commission on
the Status of Women: Mme. Uralova

Secretariat : Professor J.P. Humphrey
Mr. E. Lawson

Specialized
Agencies : Mr. J. de Givry (I.L.O.)
Mr. J. Havet (UNESCO)

1. Consideration of the Report of the Working Group on the Declaration on Human Rights (Document E/CN.4/57). (contd.)

Mr. VICTORICA (Uruguay) said that he wished to speak in explanation of his vote on Article 37. He was unable to agree to the text proposed since, in his opinion, it constituted a negation of the rights and freedoms recognised in the Declaration. In the view of his Government, and in that of most American Republics, the Declaration should not take the form of a recommendation, but should specifically mention the following three points :

- (1) That all the rights recognised and guaranteed therein should be limited only by reasonable laws.
- (2) That those laws should be based on the exigencies of public order, the security of the State and the life of the community as a whole.
- (3) That the Declaration should be considered as international law and that the enumeration of rights, duties and guarantees therein should not exclude the exercise of the inalienable rights of human beings or those derived under the democratic system.

Article 38

Mr. BOGOMOLOV (Union of Soviet Socialist Republics) suggested that Article 38 should be deleted and inserted in the Commentary.

General ROMULO (Philippine Republic) reminded representatives that the Article had originally been suggested in the Working Group by the Philippine Delegation and was now presented in the form proposed by the representative of France. The objection had been made that the proposed text introduced a reference to implementation. In his view it was necessary to define the meaning of "law", as used in the Declaration; in the past many crimes had been committed in the name of the law. He proposed an amended text which read :

"All laws in any State shall be in conformity with the purposes and principles of the United Nations as embodied in the Charter".

Mr. BOGOMOLOV (Union of Soviet Socialist Republics) maintained that the Article would be better placed in the Commentary. He pointed out that two stages of procedure still remained. First, States would have to agree on the text as a whole and on the steps for implementing the Declaration; secondly, they would have to decide how to harmonise the provisions with their respective national constitutions.

Mr. CASSIN (France) suggested as a compromise that the second paragraph of Article 38, dealing with implementation, should be treated as a Commentary. If that were done, he would accept the text as amended by the Delegate for the Philippine Republic, with the addition of the words "and Declaration dealing with Human Rights". It was not possible to ask Member States to modify their laws without indicating in what manner they were to be changed.

General ROMULO (Philippine Republic) thought that the inclusion of the word "Declaration" implied implementation, which might not be acceptable to some representatives. He therefore preferred that his text should be put to the vote separately from the French amendment.

Mr. CASSIN (France) agreed to the deletion of the word "Declaration".

After further discussion, the following text for Article 38 was adopted by 13 votes, with 3 abstentions :

"All laws in any State shall be in conformity with the purposes and principles of the United Nations as embodied in the Charter in so far as they deal with human rights".

The CHAIRMAN, referring to the French proposal that the second paragraph of the draft of Article 38 (Document E/CN.4/57) should be inserted as a comment, pointed out that the suggestion differed from the Soviet Union proposal, which was to delete the whole Article and treat it as a comment.

Colonel HODGSON (Australia) thought it had been made quite clear in the previous meetings that the question of ensuring that national laws were in conformity with the Declaration had no bearing on the Declaration itself; the matter had been treated under implementation. Whilst he had no objection to the substance of Article 38, he strongly opposed its inclusion in the Report either in the form of an Article or of a comment.

Mr. MALIK (Lebanon) said that, whether or not a vote was taken on the French proposal, the French representative had the right, in common with other representatives, to make any comment he desired.

Mr. BOGOMOLOV (Union of Soviet Socialist Republics) said that the remarks of the Australian representative might be taken to infer that, whilst the Convention was a serious document which required measures of implementation, the Declaration had no such significance. He did not accept that view. On the contrary, he regarded the Declaration as an extremely important document. His previous observations did not imply that provisions on implementation should not be contained in the Declaration, but that to include them at the present stage was premature. The text should first be referred to Member Governments for comment. The first step was to ensure agreement upon the full Declaration, and until its substance was approved, it was not, in his opinion, logical to insert references to implementation in the Commentary.

The CHAIRMAN observed that the discussion was academic, in view of the comment by the Rapporteur.

Mr. DEHOUSSE (Belgium) agreed with the Chairman's view and moved the closure of the debate.

The CHAIRMAN put to the vote the motion for closure of the debate on Article 38; it was adopted unanimously.

Article 39 proposed by the French Delegation. (Document E/CN.4/70)

Mr. CASSIN (France) said that, as the Article concerned implementation, he desired that it should be withdrawn and accepted as a comment.

Mr. DEHOUSSE (Belgium) considered that it would be useful to include the proposed Article. He therefore asked the representative of France to reconsider his decision and allow the question to be debated.

Mr. CASSIN (France) said that he had not finally withdrawn the text as an Article, but thought that the moment was ill-chosen for discussion, as it had been agreed that all decisions on implementation should be referred to the next Session of the Commission.

Mr. MALIK (Lebanon) said that the treatment of comments was of importance to him as Rapporteur and asked that a vote should be taken on this procedure at the end of consideration of the Declaration (Document E/CN.4/57).

The CHAIRMAN agreed to that proposal. The French proposal was withdrawn for inclusion as a comment.

Proposal by representative of Lebanon for an additional Article to be inserted at the end of the Declaration (Document E/CN.4/74)

Mr. MALIK (Lebanon) proposed the insertion of the following Article at the end of the Declaration :

"In construing the Articles of this Declaration the several Articles shall be regarded in their relation to each other".

He reminded representatives that the United States' Delegation had suggested the insertion of a similar Article at the end of the Convention.

Mr. KLEKOVKIN (Ukrainian Soviet Socialist Republic) enquired what purpose the proposed Article would serve.

Mr. MALIK (Lebanon), in reply, stated that, during discussion of Article 38, the question of the order of the Articles had been raised. It had then been decided to review the order after consideration of the Report. He had at the same time suggested that a covering Article should be introduced at the end of the Declaration, stating that all Articles should be considered in their relationship to each other.

Mr. KLEKOVKIN (Ukrainian Soviet Socialist Republic) felt that the document on the Declaration was becoming too long and cumbersome, with the result that it would be difficult for the ordinary people to understand it. The last suggestion, if adopted, would render the text still more complicated. He considered that the efforts of representatives should be directed rather to producing a clear and simple Declaration, which would be easily understood by the man in the street.

The CHAIRMAN put to the vote the proposal of the representative of Lebanon, which was rejected by 7 votes to 7, with 2 abstentions.

Proposal by the representative of Lebanon for an addition at the end of the Declaration (Document E/CN.4/74).

Mr. MALIK (Lebanon) suggested that the following words should be added at the end of the Declaration :

"Nothing in this Declaration shall be considered to recognise the right of any person to engage in any activity aimed at the destruction of any of the rights and freedoms prescribed therein."

He felt that the intention of the proposal should be clear. The Declaration granted all kinds of rights to mankind. Persons who were opposed to the spirit of the Declaration or who were working to undermine the rights of men should not be given the protection of those rights. It might be possible, particularly in the early

days of a despotic regime, for would-be tyrants to engage in activities under cover of and without infringement of the Declaration. Many Articles of the Declaration were open to such abuse and a provision of that nature was an essential protection. Its object was to prevent any persons from engaging in any subversive activities which might be in any direct or indirect manner damaging to the rights of man.

Colonel HODGSON (Australia) enquired why the Article was limited to "persons", since in the past it had frequently been States which were the chief offenders against human rights. He proposed the phrase "... right of any State or any person " should be used.

Mrs. MEHTA (India) pointed out that the Declaration dealt with the rights of individuals and not of States.

Mr. MALIK (Lebanon) said that the observation of the representative of India was strictly correct, but he had no objection if the Australian representative wished the rights of Governments to be included.

Mr. VICTORICA (Uruguay) stated that, since amendments introduced by him had not been translated into English and placed before the Commission, he had decided to abstain from voting. In his opinion the wording of the proposed Article was obscure.

The CHAIRMAN put to the vote the proposal of the representative of Lebanon, as amended by the Australian representative, which was adopted by 8 votes, with 7 abstentions.

Article 25

The CHAIRMAN reminded the Commission that consideration of Article 25 had been deferred until the end of the debate on the Declaration. It would have to be decided whether it was to be included in the Preamble, or inserted as the final Article, or deleted.

Mr. BOGOMOLOV (Union of Soviet Socialist Republics) did not feel that the text was satisfactory enough for inclusion as a separate Article. He suggested that it should be inserted in the Commentary, with a note recommending that it should be taken into consideration in the drafting of the Preamble.

The CHAIRMAN put to the vote the proposal of the Soviet Union representative, which was adopted by 10 votes, with 6 abstentions.

The CHAIRMAN asked the Rapporteur to state his views regarding the treatment of the comments in Document E/CN.4/57.

Mr. MALIK (Lebanon) pointed out that nearly every Article of Document E/CN.4/57 had some comment by a member of the Working Group appended. Representatives who had not served on the Working Group might also have comments to make. He therefore proposed that his Report should contain only those comments passed to him in writing by Delegations for inclusion in the Annex.

The CHAIRMAN said that the effect of the RAPPORTEUR's proposal would be that he would include in the Annex to his Report only such comments as were given to him in writing. She pointed out that other comments by representatives appeared in the Summary Records of the Commission and of the Working Groups.

Replying to a question by the representative of CHINA as to the treatment to be accorded to the two versions of Article 36, the CHAIRMAN agreed that the draft text proposed by the Sub-Commission on the Protection of Minorities would be included in the Annex.

The proposal of the representative of LEBANON was accepted without a vote.

The CHAIRMAN directed attention to the United States' Resolution contained in Document E/CN.4/72. She reminded representatives of the advantages of a clear, brief text, which could be readily understood by the ordinary man and woman. The Convention

was essentially a legal document, and as such it might not be easily understandable; on the other hand the Declaration ought to be in terms whose meaning would be immediately clear. She pointed out that the present draft of the Declaration contained 36 Articles in considerable detail. The United States' Resolution had been proposed in the hope that the Drafting Committee might be able to shorten it, while retaining all the essential provisions.

Mr. BOGOMOLOV (Union of Soviet Socialist Republics) asked if a vote would be taken on the document as a whole.

The CHAIRMAN said that, if it was desired, a vote would be taken on the whole document.

Mrs. MEHTA (India) supporting the proposed Resolution, stated that, in her opinion, the Bill of Human Rights should be simple, short and intelligible to all; she felt that necessary details should be included in the Convention or Conventions.

Mr. MALIK (Lebanon) agreed in substance with the proposed Resolution. He considered, however, that the suggestion that the document should be shorter ought to have been made at the beginning of the work of the Commission. He suggested that the Drafting Committee might consider that abbreviation of the draft document should have been done by the Commission. He proposed the following wording :

"The Human Rights Commission requests the Drafting Committee, in revising the Draft Declaration in its second session, to make it as short as possible."

General ROMULO (Philippines) pointed out that the Working Group had considered, but had not approved, the abridged Declaration, suggested by the United States (E/CN.4/36). He felt that simplicity of language was more important than the length of the Declaration, and he did not agree with the amendment proposed by the representative of Lebanon.

The CHAIRMAN said that the question of adopting the Declaration proposed by the United States of America did not arise, and she put to the vote the Resolution as amended by the representative of Lebanon.

This was adopted by 8 votes to 3, with 5 abstentions.

The CHAIRMAN then proposed that the vote on the Declaration as a whole should be deferred until the Rapporteur had produced his report for consideration.

General ROMULO (Philippines) proposed that the Commission should vote immediately on the Declaration as a whole.

Colonel HODGSON (Australia) raised the problem of the drafting of proposals, the substance of which had been accepted by the Commission. In his opinion it was necessary to use language easily intelligible both to the peoples of the world and to governments. He referred to Articles 11, 12, 13, 14 and 22 which were drafted in imperative language; and to Articles 15 to 21 which were, he thought, correctly drafted in declaratory language. He said he had understood that the Rapporteur would make the final and correct draft of the Declaration.

The CHAIRMAN said that she had understood that members who had proposed verbal amendments would co-operate with the Rapporteur for drafting purposes and with the representative of France for the translation.

Mr. MALIK (Lebanon) felt that the proposal by the representative of Australia was one of substance. He explained that some articles had lent themselves to a declaratory form, but that others, not yet fully developed in substance, had been drafted in imperative form. He suggested that the point raised should be included in a note to the effect that the declaratory language of the Declaration should be kept distinct from the imperative language of the Convention. He also proposed that the final drafting should be left to the Drafting Committee.

Mr. DEHOUSSE (Belgium), referring to the proposal by the representative of the Philippines, said that, in his opinion, the Declaration was both insufficient and inoperative. This was not, he said, by reason of its contents, which he considered to be good, but because the Declaration by its legal nature could not be obligatory. However, he would support the proposal for two reasons: first, as a token of his good will, as he considered that international co-operation involved the appreciation of other points of view; secondly, because he considered that the Declaration was the first step towards the protection of human rights.

Mr. BOGOMOLOV (Union of Soviet Socialist Republics) felt that the draft Declaration was insufficient with regard to the protection of human rights. He stated that the Soviet Union Delegation reserved the right to present at a later date its own version of a draft Declaration of Human Rights.

Mr. AMADO (Panama) said that it had frequently been stated, in these discussions, that what was asked for in the documents of the San Francisco Conference and in those of subsequent meetings of the United Nations, was not an International Declaration of Human Rights, which would have no binding force, but an International Bill of Rights. Such a Bill of Rights had been defined by some delegates as consisting of the whole Declaration, one or more Conventions, and machinery for implementation. He said that instead of a clear-cut Declaration with inter-connected articles, a general text had now been drawn up which readily lent itself to various interpretations and which might give rise to regrettable disputes.

At the San Francisco Conference the adoption had been proposed of a Declaration of Fundamental Human Rights and a Declaration of the Rights and Duties of the Nations, to constitute jointly an International Bill of Rights. Panama intended to submit her

draft for a Declaration of the Rights and Duties of States at the next meeting, for incorporation in a pact of fellowship between American Republics.

American opinion, he said, was that a Declaration of the reciprocal Rights and Duties of States constituted a valuable foundation for the future clarification of International Law. In 1933, the American nations concluded a Convention on the Rights and Duties of States. He considered that there was no reason why the United Nations should declare themselves incapable of making a similar effort.

The international protection of the individual, which they were now advocating, required a previous recognition that the human person, like the State, is a subject of international law. In urging the imperative need for a Declaration, he said that Panama was not merely paying lip service to these principles.

He said that it had also been stated that, merely by drawing up a Declaration, one or more Conventions and machinery for implementation, effective, if not complete, protection of the individual was obtained. The fact that the individual was a subject of international law is remembered, but he considered that the fact that he is a citizen of the State is forgotten. It is obvious, he said, that, even for the purpose of completing the protection of the individual himself, the simultaneous conclusion of a declaration of human rights (supplemented by conventions and machinery for implementation) and a declaration on the rights and duties of nations is required. This necessity, in his opinion, had not always been taken into account, in drawing up the preliminary draft declaration. The individual needs to know not only what are his internationally recognized rights, but also what are the rights and the duties of the State, of which he is a citizen, towards other States and other individuals.

He considered that a knowledge of the consequences of a national breach of those duties would act as a strong brake on dictatorship, and would be one of the most certain means of establishing the democratic ideals of the United Nations.

In short, to carry out the Declaration, he said, was a binding obligation, but it does not offer complete protection, even from the point of view of the individual, without a Declaration of the Rights and Duties of States.

Lord DUKESTON (United Kingdom) referred to the Document E/CN.4/38, at page 4, concerning the "task of promotion of human rights". He proposed that this statement should be adopted as an introduction both to the Declaration and to the Convention. He asked whether his proposal could be moved in any form, or whether any such motion for an introduction should be deferred until the third session of the Commission in May 1948.

The CHAIRMAN said that it had been agreed by the Commission that a Preamble should be considered by all members from a political and from a literary point of view, in order that the Commission could choose the best version when the draft Declaration was finally ready.

Lord DUKESTON (United Kingdom) said that he understood the problem to be whether any proposed draft introduction should be discussed at that session or should be forwarded in time for the discussion of the draft Convention and Declaration in May 1948. If the latter was the case, he said that he could not force a consideration of the introduction proposed by his Delegation before the consideration of similar proposals by other countries.

Mr. CASSIN (France) said that he would support the entire text of the Declaration. He realised its imperfections, but considered that it would be operative if a Convention, or other organ of implementation, was agreed.

Mr. MALIK (Lebanon), referring to the statement by the representative of Panama, paid a tribute to Dr. Alfaro for his contribution to the work of Human Rights since the time of the San Francisco Conference. He added that he had great respect for the humane and juridical culture of Latin America which had contributed essentially to the Declaration.

The CHAIRMAN put to the vote the adoption of the Declaration.

It was adopted by 13 votes to 0, with 4 abstentions.

Mr. VICTORICA (Uruguay), in explanation of his vote, said that he regarded the Declaration as a vague document, but one with a good intention. He considered that the Declaration should be positive and not only a statement of recommendations.

Article 1 of the Convention

Mr. CASSIN (France) said that his proposed amendment (E/CN.4/71) was designed to show the connection between the Declaration and the Convention. He said that, in his opinion, it was necessary to show at the beginning of the Convention, and that this was only the first of, perhaps, several Conventions. He would be willing for it to be included in a Preamble.

Lord DUKESTON (United Kingdom) said that the French amendment was an Introduction and not an amendment to Article 1.

Mr. CASSIN (France) accepted the deferment of the discussion of his proposed amendment until the third session of the Commission. He added the reservation that he would vote against the adoption of Article 1 which he regarded as a Preamble.

The CHAIRMAN put Article 1 to the vote, which was adopted by 7 votes to 3, with 4 abstentions.

Article 2 of Convention

The CHAIRMAN referred to two amendments proposed by the representatives of Egypt and of India.

The amendment proposed by the representative of Egypt was to replace the first sentence of Article 2 with the following words "the States parties to the present Instrument undertake to ensure".

The amendment proposed by the representative of India was to replace the words "is by Int.Law" by the words "shall be" after the words "Every State" in line 1.

Mr. LOUTFI (Egypt), referring to his proposed amendment, said that the existing text of the first sentence made the Convention part of International Law. He considered that the necessary implementation was usually contained in the body of a Convention, and not made part of international law. He said that, in his opinion, it would be possible for States, which were not parties to the Convention, to argue that implementation had already been covered by international law.

Lord DUKESTON (United Kingdom) said that, in his opinion, it was important to recognize that there was an obligation, not only on States which acceded to the Bill, but on all States to observe human rights and freedoms prescribed in it. He considered that such rights and freedoms were part of the law of nature which was the foundation of all law and of international law.

He said that, if it was implied in the Convention that those rights and freedoms were not part of general international law, the Commission would be, in his opinion, giving substance to the argument that no action could be legally taken against States which had not acceded to the Convention.

He considered that the Convention had two main purposes. First, to declare what were the minimum rights and freedoms to which all mankind was entitled. Secondly, to provide special means by which the States parties to it agreed to enforce these rights amongst each other.

It had been suggested, he said, that to say in the Convention that human rights and fundamental freedoms are part of international law, would be to admit that those rights and freedoms can be enforced by States, not parties to the Convention, against States which are

parties to it. He said that he had no qualms in this connection, since the United Kingdom intended within her territories to accord those rights and freedoms to all persons equally whether or not they were nationals of States parties to the Convention.

He suggested that the reference to international law should be left in the draft of the Convention in order that those States receiving the draft might be provoked to state their opinions on that important idea.

Mr. CASSIN (France) proposed that the word "droit" should replace the word "loi" in the French text. This was accepted and did not affect the English text.

The CHAIRMAN put to the vote the amendment proposed by the representative of Egypt, which was adopted by 8 votes to 1, with 4 abstentions.

The Indian amendment fell by virtue of this decision.

The CHAIRMAN then put to the vote Article 2 of the Convention, which was adopted by 10 votes to 0, with 5 abstentions.

Article 3 of Convention

The CHAIRMAN said that no amendment had been proposed to this Article. As representative of the United States of America, she wished to add, as a comment after Article 3, the first paragraph of page 2 in Document E/CN.4/37, reading as follows: "Each high Contracting Party shall make biennial reports to the Secretary-General of the United Nations with respect to its implementation of this Convention."

The CHAIRMAN then put Article 3 to the vote, which was adopted by 9 votes to 0, with 4 abstentions.
